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"I will stand for my client's rights. I am  
a trial lawyer."  
—Ron Motley (1944–2013)

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January 8, 2016

Senior District Judge Charles R. Breyer  
San Francisco Courthouse  
Courtroom 6 – 17<sup>th</sup> Floor  
450 Golden Gate Avenue  
San Francisco, CA 94102

Re: Leadership Application of Joseph F. Rice in *In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, 15-MD-2672 CRB (JSC)

Dear Judge Breyer:

Volkswagen is doing to the air what BP did to the Gulf and the tobacco industry did to children, but here, the polluting well has not been capped, nor the victims protected. An estimated 600,000 non-compliant unclean diesel vehicles remain on U.S. roads. VW consumers and dealers are stuck with vehicles they cannot sell, trade, or in good faith drive. This MDL requires immediate and experienced leadership to provide **resolution** for all harmed.

I write to respectfully submit my application for co-lead counsel.<sup>1</sup> In the alternative, I am applying for a position on the plaintiffs' steering committee. I am co-founder and Managing Member of Motley Rice LLC, one of the nation's largest, most experienced and well-respected law firms exclusively representing plaintiffs in mass torts and complex litigation.

**(1) Professional experience in this type of litigation, including MDL experience as lead or liaison counsel and/or service of any plaintiffs' committees or subcommittees.**

As the Court noted, the case against VW is unique in some key aspects. This is a settlement case – despite VW's public pledge to “vigorously defend”<sup>2</sup> in this MDL, and its refusal to accept service – liability in this case is not seriously in question. The appropriate remedies and measure of damages are at the crux of the issue. To that end, I have extensive complex case resolution experience relevant to the issues in this MDL that I will touch upon here. Simply put, my 36 years of law practice have been largely devoted to complex case resolution. Recently, I crafted the framework for the \$800 million settlement with AMS in *In Re: American Medical Systems, Inc., Pelvic Repair Systems Products Liability Litigation*, No. 12-MD-2325 (S.D.W.V.) before Judge Joseph R. Goodwin that resolved more than 22,000 TVM claims. I also led and lead settlement negotiations with the other medical device defendants in that mass tort consolidation.

In the automotive context, I currently serve on the PSC in the *In Re: General Motors LLC Ignition Switch Litigation*, No. 14-MD-02543 (S.D.N.Y.) before Judge Jesse M. Furman. In the liability phase, I took depositions of General Motors' executives, engineers and in-house legal counsel.<sup>3</sup>

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<sup>1</sup> I respectfully suggest the Court appoint co-lead counsel: one east coast and one west coast to increase efficiency and ensure geographical representation and to allow one to focus on litigation and one on resolution. Moreover, I thank the Court for utilizing Court Call and similar real-time technology going forward to save on costs.

<sup>2</sup> David Shepardson and Jessica Dye, *Volkswagen diesel civil suits to be heard in California*, Reuters, Dec. 8, 2015.

<sup>3</sup> My firm's MDL automotive experience also includes: *In Re: Takata Airbag Products Liability Litigation*, No. 15-MD-02599 (S.D. Fla.)(Federico A. Moreno) (discovery subcommittee) and *In Re: Bridgestone/Firestone, Inc., ATX, ATX II and Wilderness Tires Products Liability Litigation*, No. 00-MD-01373 (S.D. Ind.)(Sarah E. Barker) (personal jurisdiction over Bridgestone of Japan, subcommittee lead). Motley Rice has the requisite technical and legal experience in vehicle defect cases, and extensive experience in litigation against non-U.S.-based entities.

I served as one of two lead negotiators for the Deepwater Horizon Economic and Property Damages Settlement in *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico*, on April 20, 2010, No. 10-MD-2179 (E.D. La.). I serve on the PSC, and working with the MDL Committee, defense counsel, the Honorable Carl J. Barbier and Magistrate Judge Sally Shushan, negotiated a class action resolution with BP to resolve tens of thousands of business economic loss and property damage claims. Class certification of that settlement was recently affirmed by the 5<sup>th</sup> Circuit.<sup>4</sup> The value of the BP settlement exceeds \$10 billion.

In 9/11, I led the mediations and settlements of fifty-six plaintiffs who opted out of the Feinberg VCF Fund to litigate against the airlines for negligent security measures. In resolving the 9/11 aviation security cases, Judge Alvin Hellerstein noted: "the high quality and substantial extent of the Motley Rice firm's work."<sup>5</sup> Special Master Kenneth Feinberg praised the efforts of my firm in the 9/11 VCF, thusly: "The professionalism and skill of the Motley firm in this case, and numerous other claims, has made my job as Special Master much easier, and has made the Fund work a great deal more efficiently and effectively. The American people and the Fund are in Mr. Motley's debt, as well as those of his colleagues, for a superb job well done."<sup>6</sup>

I initially earned national recognition for my work on behalf of sickened asbestos workers in the 1980s, where I fashioned some of the first successful mass tort settlements with the asbestos industry. I have leadership experience on numerous asbestos bankruptcy trust committees. Over the last 10 years, I have served as chair or co-chair of the Asbestos Negotiating Committee in Chapter 11 Bankruptcy reorganizations involving former asbestos manufacturing defendants including AWI, Federal Mogul, Pittsburg Corning, WR Grace and others.

In tobacco, I led the resolution of 26 states' Attorneys General landmark litigation to recoup healthcare funds and exact marketing restrictions from cigarette manufacturers. I was the lead private negotiator for the State Attorneys General and one of the architects of the \$246 billion 1998 Tobacco Master Settlement Agreement that was accepted by all States, the largest civil settlement in U.S. history. I received the National Association of Attorneys General President's Award for my work with all of the State AGs, where I built lasting professional relationships that endure to this day. Here the States must be part of resolution.

**(2) The names and contact information or judges before whom the applicant has appeared in the matters discussed in response to No. 1 above.**

The contact information for the jurists discussed above are provided in my attached Resume.

**(3) Willingness and ability to immediately commit to time-consuming litigation.**

I commit to the Court and to counsel that I am willing and able to dedicate the time necessary to effectively and efficiently ensure the prompt, full and fair resolution of this matter. I bring to this case relevant experience in the complex case resolution in mass tort, class action, vehicle defect, product liability, consumer protection, consumer fraud, environmental disaster, civil RICO, bankruptcy, and environmental contamination cases; I fully appreciate the time commitment necessary in MDL leadership.

**(4) Willingness and ability to work cooperatively with other plaintiffs' counsel and defense counsel.**

Motley Rice grew out of a business model that centers on working efficiently with law firms from all geographical areas of the nation and the world. I have a proven track record of working cooperatively with both plaintiffs' and defense counsel, federal and state law enforcement, claims

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<sup>4</sup> *In Re: Deepwater Horizon-Appeals of the Econ. & Prop. Damage Class Action Settlement*, 756 F.3d 320 (5<sup>th</sup> Cir. 2014).

<sup>5</sup> *In Re: September 11 Litigation*, No. 21-MC-97(AKH) (S.D.N.Y., Aug. 9, 2007), Dkt. #1175, Order Concerning Settlement and Fees.

<sup>6</sup> September 11<sup>th</sup> Victims Compensation Fund Hearing, Mar. 25, 2004.

administrators, Attorneys General, Special Magistrates, and the Courts. In the process, I am proud to have built strong relationships with counsel on both sides of the table in both the national and international realm. In this case, I filed suit against Volkswagen with nine sets of co-counsel from across the U.S. I have co-counsel in Germany and have worked within the German legal system.<sup>7</sup> I have experience dealing with parallel civil and criminal investigations and the corresponding federal agencies (including the EPA) in asbestos, tobacco, 9/11, BP, and GM. I attach a list of plaintiffs' lawyers and firms with filed cases that support my application.

**(5) Access to resources to prosecute the litigation in a timely manner.**

Motley Rice brings extensive discovery, jury trial, and case resolution experience necessary to prosecute, resolve or try complex mass tort cases that often run on parallel tracks. My firm's primary mission is to represent plaintiffs seeking justice in the face of national and international corporations engaged in negligence, fraud, and cover-up that threaten to adversely impact public health and safety. I bring my own personal commitment, knowledge and resources, and with it over 75 Motley Rice attorneys experienced in complex mass tort practice and 250 experienced litigation support staff. I commit those resources to this case.

**(6) Willingness to serve as co-lead counsel, a member of the steering committee, or both.**

I am applying for co-lead counsel, or membership on the Plaintiffs' Steering Committee.

**(7) The particular category or categories of plaintiffs the applicant wants to specifically represent (vehicle owners, lessees, dealerships or all plaintiffs, etc.**

I am willing and able to represent all plaintiffs. My current clients are Volkswagen consumers from 22 States.<sup>8</sup>

**(8) Any other considerations that qualify counsel for a leadership position.**

I have and will devote considerable time, effort, expense and thought into the issues raised by this case. I am honored to have been identified by Professor Samuel Issacharoff of the New York University School of Law, as "the best strategic thinker on the end stages of litigation that I've ever seen."<sup>9</sup> I was described by Corporate Legal Times as one of the nations "five most respected (and feared) plaintiffs' attorneys" in America.<sup>10</sup> Based on a poll of defense counsel and legal scholars, I was cited as one of the toughest, sharpest and hardest working litigators they have faced. As the article notes, "[f]or all his talents as a shrewd negotiator...Rice has earned most of his respect from playing fair and remaining humble."<sup>11</sup> The American Lawyer called me "one of the shrewdest businessmen practicing law."<sup>12</sup> If appointed, I commit to the Court, I will fight for full, fair and timely remedies and compensation for those harmed by Volkswagen's flagrant misconduct.

I thank the Court in advance for its time and consideration.

Respectfully Submitted,

  
Joseph F. Rice

<sup>7</sup> For example, with our 9/11 clients, at the request of the German prosecutor, we formally intervened in 9/11 criminal trials and provided testimony for the prosecution. I also represent U.S.-based German consumers.

<sup>8</sup> I have experience representing vehicle dealers in GM and BP, and experience and resources in securities litigation necessary to represent all plaintiffs, or to serve on behalf of VW consumers, at the Court's discretion.

<sup>9</sup> Susan Beck, "How BP Decided to Fight the Deepwater Settlement," *The American Lawyer*, Mar. 5, 2014.

<sup>10</sup> Sheryl Fred, "The Best of the Bad," *Corporate Legal Times*, Volume 14, No. 147, Feb. 2004.

<sup>11</sup> *Id.*

<sup>12</sup> Alison Frankel, "Who Killed the Mass Torts Bonanza?," *The American Lawyer*, Dec. 12, 2006.